



Theodore E. Roberts
Attorney

101 Ash Street
San Diego, CA 92101

Tel: 619-699-5111
Fax: 619-699-5027
troberts.com

April 1, 2008

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Draft Resolution No. E-4160

Dear Mr. Gatchalian:

In accordance with the instructions included with Draft Resolution No. E-4160 issued on March 13, 2008 and the subsequent letter from the Commission's Executive Director, Paul Clanon, Sempra Generation hereby offers its Comments on the Draft Resolution. As a threshold matter, Sempra Generation joins in the concerns expressed by Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company, the Center for Energy Efficiency and Renewable Technologies and the California Wind Energy Association (hereafter, the "Requesting Parties") in their joint letter to Mr. Clanon dated March 28, 2008. Sempra Generation appreciates very much the response from Mr. Clanon agreeing to bifurcate the issues in the Draft Resolution.

Besides the due process issues raised by the Requesting Parties, the concerns Sempra Generation has with the Draft Resolution are that (1) it establishes criteria for the eligibility of renewable energy projects to receive "Above MPR Funds" or AMFs that are beyond the scope of the requirements set forth in SB 1036¹ and that unfairly discriminate against renewable facilities that are interconnected to the California grid or dynamically scheduled into California, and (2) a portion of the Draft Resolution can be read as trying to extend the Commission's jurisdiction to the administration of contracts by the renewable project without any legal basis for doing so. Sempra Generation believes that these three issues have the potential to undermine the State's goals with respect to the development of additional renewable generation, and should be either eliminated or modified in the Final Resolution, as discussed below.

¹ 2007 Stat., ch 685.

Sempra Generation's proposed revisions to the text, Findings of Fact and Conclusions of Law are included as Appendix A.

Renewable Generators Interconnected to the California Grid Should be Eligible for AMFs

In Paragraph 3.3.1, the Draft Resolution proposes a number of eligibility criteria for the award of AMFs that are in excess of those specified in AB 1036, allegedly "to promote the goals of the RPS program and to ensure that AMFs are used in a cost-effective manner." Among these additional criteria are a requirement that "the contract is with an RPS-eligible facility that is physically located in California," with a citation to Public Resources Code section 25740.5(c). That statutory subdivision indicates that one of the goals of the RPS program is to encourage a near-term increase in the amount of in-state renewable generation "while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents." Sempra Generation believes that the Energy Division staff has gone too far in their interpretation of this statutory goal by proposing to restrict the availability of AMFs only to those resources located physically inside the State's borders. Such restriction is contrary to the overall goals of the RPS program as well as the criteria used by the California Energy Commission ("CEC") to determine facility eligibility under the program, and creates the potential for the State to attempt to obtain the benefits of renewable generation without providing the needed incentives to project developers. Such a scenario would hinder, rather than promote, additional renewable generation to serve California.

Under the former Supplemental Energy Payments (SEPs) program administered by the CEC, a renewable facility was considered to be an in-state resource eligible for SEPs if its first point of interconnection to the WECC grid was within the State.² Sempra Generation believes that is a much more reasonable and practical guideline and wholly consistent with the RPS program. Sempra Generation has under development the proposed La Rumorosa wind facility located in the vicinity of La Rumorosa in the State of Baja California Norte, Mexico, but whose first point of interconnection is proposed to be with the California Independent System Operator ("CAISO") grid in California.³ As presently configured and planned, La Rumorosa in fact would have no other markets besides the CAISO markets into which it could physically deliver energy. La Rumorosa was selected by Southern California Edison in its 2006 renewable resource procurement, and would thus be supplying renewable energy to California after it commences commercial operations. Under the Draft Resolution, La Rumorosa would be a facility interconnected to California and supplying renewable energy to help meet the State's renewable energy goals, yet would be ineligible to receive AMFs. The very customers served by energy from La Rumorosa have paid, and will continue to pay, California's Public Goods Charge from which the AMFs pool is derived, but that same funding from those same customers consuming that same renewable energy could not be used to help fund the construction and operation of the facility that is supplying renewable energy to meet the State's goals. Clearly, such a result would be manifestly unfair and discriminatory with respect to resources that are supplying renewable energy to achieve California's goals, but are not physically located within the State's boundaries.

² *Renewables Portfolio Standard Eligibility (Second Edition)*, published by the CEC in March 2007, at p. 25.

³ An application for a Presidential Permit for the interconnection of La Rumorosa was filed with the U.S. Department of Energy on December 20, 2007.

The far better policy would be to continue the practice of the CEC and allow those resources whose first point of interconnection is within California to be eligible for AMFs.

Moreover, Sempra Generation believes that the Commission should go further and also allow resources that, although physically located outside of California, are dynamically scheduled into California to be eligible for AMFs as well. The renewables programs on the whole are at a critical point with respect to the development of sufficient generating projects to allow the State to meet its goals, and the Commission should be doing everything it can to encourage more renewable generation, not less. Adopting the changes recommended by Sempra Generation will help bring more renewable generation to California, in keeping with State policy. The Draft Resolution actually undermines state policy, as explained above.

The Commission Lacks Authority to Conduct Prudency Reviews of Generators

The Draft Resolution indicates in Paragraph 3.5 that a project could lose previously awarded AMFs, because AMF awards are “subject to Commission review of the IOU’s prudent administration of the PPA.” [Emphasis added]. However, in the following sentence, the Draft Resolution states that “If a project fails or has imprudent contract management, the funds will be added back to the IOU’s AMFs balance. [Emphasis added]. This second sentence is somewhat ambiguous and can be read to suggest that the Commission is attempting to exert jurisdiction over the renewables project itself by “reviewing” the project’s contract management under threat of revoking previously awarded funds. It is well known and understood that the Commission lacks jurisdiction over exempt wholesale generators⁴ including any such renewable generating facilities, and the Draft Resolution should be clarified accordingly by stating that funding to the IOU for AMFs could be revoked if the IOU is found to have been imprudent in its administration of the contract.

Respectfully submitted,



Theodore E. Roberts
Attorney for Sempra Generation

⁴ Cal. Pub. Util. Code § 216(g).

APPENIX A

SEMPRA GENERATION'S PROPOSED MODIFICATIONS

Text

Paragraph 3.3.1, Pg. 18:

In addition, the Commission adopts the following AMFs eligibility criteria to promote the goals of the RPS program and to ensure that AMFs are used in a cost-effective manner:

...

(2) The contract is with an RPS-eligible facility that is either physically located in California, has its first point of interconnection to the WECC grid within California, or is dynamically scheduled into the California grid;

Paragraph 3.5, Pg. 22:

If a project fails or ~~has~~ if the contract is imprudently contract managed ~~ment~~ by the IOU, the funds will be added back to the IOU's AMFs.

Findings of Fact

None

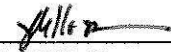
Conclusions of Law

9) To promote the goals of the Renewables Portfolio Standard, above-MPR costs of a contract may be counted towards the cost limitation if all of the following conditions are satisfied: ~~a~~1) the contract is an all-in, fixed price for a bundled energy product from an RPS-eligible facility; 2) the contract is with an RPS-eligible facility that is either physically located in California, has its first point of interconnection to the WECC grid within California, or is dynamically scheduled into the California grid; 3) the project is not otherwise eligible for other commission-approved funding programs; and 4) the AMFs request does not include firming and shaping costs.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **SEMPRA GENERATION'S LETTER RE: DRAFT RESOLUTION NO. E-4160** on all parties identified in R.06-05-027 and R.06-02-012 by U.S. mail and electronic mail, and by Federal Express to the assigned Administrative Law Judge(s).

Dated at San Diego, California, this 1st day of April, 2008.



Joel Dellosa